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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 182

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AND SWITCHMEN'S UNION OF NORTH AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 216–220)[1] is reported at 79 F. Supp. 485. The *per curiam* opinion of the Court of Appeals (2 R. 76) is reported at 174 F. 2d 160.

JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 1949 (2 R. 77). The petition

[1] The record is printed in two volumes. Volume I containing the proceedings in the district court will be referred to as "R" and Volume II containing the proceedings in the Court of Appeals will be referred to as "2 R."

for a writ of certiorari was filed on July 11, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

In the face of a threatened strike by the three petitioning unions of railroad employees which would have paralyzed the national rail transportation system, the United States by executive order seized possession and control of the railroads involved. When the strike threat continued, an injunction was obtained by the United States. Thereafter the unions and the railroads entered into agreements settling their dispute, the strike threat disappeared, the Government returned possession and control of the railroads to their owners and the injunction was vacated.

The questions presented are:

1. Whether petitioners have standing to attack as improperly granted an injunction which has been vacated on grounds of mootness.

2. Whether settlement of the dispute and disappearance of the strike threat, the return of the railroads to private possession and control, and the vacation of the order enjoining the strike renders the case moot.

CONTRACT PROVISIONS INVOLVED

The pertinent contract provisions are set forth in the Appendix, *infra*, pp. 12–14.

STATEMENT

This case involves an injunction obtained by the United States to restrain a strike on the nation's railroads after their seizure by the Government (R. 2, 36). The injunction was subsequently vacated as a result of the settlement of the underlying labor dispute (2 R. 77). Petitioners are three unincorporated labor organizations representing employees in the railway industry (R. 231, 232, 233). After failing to settle by negotiation a dispute concerning wages and working rules, petitioners on January 16, 1948, issued a strike call with respect to railroad carriers throughout the nation to become effective on February 1, 1948 (R. 225, 252–259). The strike was postponed when the mediation machinery of the Railway Labor Act was invoked, but no settlement of the dispute was reached (R. 225–226).

On April 30, 1948, petitioners notified the carriers that a strike would commence on May 11, 1948, unless the issues in dispute were previously settled (R. 226). On May 10, 1948, pursuant to Executive Order No. 9957 (13 F. R. 2503), the United States, through the Secretary of the Army, took possession of and assumed control and operation of the railroads involved in the dispute (R. 227, 226).[2] The Secretary of the Army exercised complete authority over the operation of the seized railroads, although he dele-

[2] The Executive Order is reproduced in the record at R. 266–270.

gated managerial functions to the former management (R. 227–228).

After seizure, the chief executives of the petitioning unions advised the Secretary of the Army that the strike order previously issued for May 11, 1948, would not be cancelled (R. 227). Although involving only a small proportion of the railroad employees of the nation, the threatened strike would have resulted in an immediate shutdown of virtually all railroad operations, would have obstructed the performance of vital governmental functions, and would have imperiled the national health and safety (R. 230–231). On May 10th the United States sued for a permanent injunction against the threatened strike and obtained immediately a temporary restraining order which was extended by consent from time to time until June 10, 1948 (R. 233, 234). After hearings, a preliminary injunction was granted on June 10, 1948 and a permanent injunction on July 2, 1948 (R. 234, 236–237). The district court made clear that the injunction was limited to the immediate situation (R. 222).

On July 8, 1948, a proposal for settlement of the dispute was accepted by representatives of the unions and operators (2 R. 10, 26, 36). On the following day, as a result of the settlement, the Secretary of the Army terminated and relinquished possession, control, and operation of the seized railroads (2 R. 11, 27, 37, 38). Agreements formalizing the settlement were subsequently ex-

ecuted by the unions and the carriers, *infra*, pp. 12–14 (2 R. 28, 42, 60, 63, Pet. p. 9, n. 4).

Meanwhile, notices of appeal had been filed from the orders granting a preliminary and permanent injunction and the appeals were docketed in the court below (2 R. 78, 82). On August 2, 1948, the United States filed in the court below a motion to discharge the permanent injunction or, in the alternative, to remand the case to the district court for its discharge (2 R. 9) and on August 17, 1948, filed a motion for disposition of the cause on the grounds of mootness (2 R. 24). The Government's motions asserted that the underlying labor disputes between the carriers and the unions had been irrevocably settled, that possession, control, and operation of the railroads had been returned to private owners, that there was no longer any threat of a strike, that the need for injunctive relief was no longer present, and that these facts rendered the controversy moot (2 R. 12, 29). During the pendency of the appeal and before judgment, petitioners on September 14, 1948, filed a petition for a writ of certiorari in this Court. October Term, 1948, No. 277. Further proceedings in the court below were thereupon suspended, on petitioners' motion, before any action had been taken on the motion to discharge the injunction or to hold the case moot (2 R. 7–8). The petition for certiorari was denied on November 15, 1948. 335 U. S. 867. The case was thereafter heard on the original appeal by the court below which held

that "the controversy involved in these appeals has become moot," vacated the order appealed from, and remanded the causes to the district court with instructions to dismiss the complaint (2 R. 76, 77).

ARGUMENT

Notwithstanding the possible importance of the questions which the petition attempts to have this Court decide, there are no longer any actual issues upon which the judgment of this Court can have effect because (1) petitioners have obtained all the relief they can obtain if they prevail on the merits in this Court, and (2) events which have occurred since the initiation of the litigation have rendered the controversy moot.

1. This litigation arose out of the complaint filed by the United States for an injunction (R. 2–7). Petitioners opposed the granting of the injunction and sought to have the complaint dismissed (R. 29, 222). On the appeal, after a permanent injunction had been granted, petitioners requested "that the judgment below should be reversed and the cause remanded with instructions to the trial court to vacate the permanent injunction and dismiss the complaint" (Appellants' brief below, p. 22). After hearing the appeal, the court below by its judgment directed "that the orders of the said District Court appealed from in these causes be, and the same are hereby, vacated, and that these causes be, and they are hereby, remanded to the said District Court with

instructions to dismiss the complaint" (2 R. 77). It is difficult to perceive of any greater relief that can be afforded petitioners in the present litigation than has already been granted. Admittedly, if the court below assigned different reasons for its action, the opinion might prove advantageous to petitioners at some future time in some other litigation. We know of no situation, however, in which dissatisfaction with the reasons for a decision rather than with the judgment itself has been considered appropriate grounds for review by this Court.

2. Moreover, the court below was clearly correct in holding the controversy moot, even aside from its order vacating the injunction. The disputes which gave rise to the threatened strike were finally settled, and the strike threat growing out of these disputes, which led to seizure of the railroads by the United States, no longer existed. As a result of the settlement of the disputes and the dissipation of the strike threat, the railroads were returned to their owners. The reason for the injunction no longer existed and, since the injunction was intended to be limited to the particular situation, there was no subject matter with respect to which it could operate.

Although the command of the injunction was in general terms, the court made clear that it was intended to be limited to the particular strike threat which then confronted the national railway transportation system. When objection

was raised to the scope of the injunction on the ground, among others, that "it is not limited to this dispute," the court explained that the comprehensive wording was necessary to prevent evasion but that "it couldn't possibly comprehend anything except the substance of the issues before the Court" (R. 222). Furthermore, the Government's complaint demonstrates that it was directed to the specific railroad strike which was then threatening the nation (R. 2–6). Since this strike threat no longer existed and could not be revived because of the final settlement of the underlying dispute, the force of the injunction was spent. There was no conduct or threatened conduct which the injunction could restrain and the controversy was thus rendered moot. A determination of the legal questions raised by petitioners would therefore be a decision on an abstract question serving the sole purpose of an advisory opinion upon which petitioners and others might rely in the event that the facts of the instant situation should repeat themselves.

Since a judgment by the court below could afford petitioners no effectual remedy and since the effects of the issuance of the injunction could not be undone or in any way remedied, the case was properly held moot. "It is well settled that this court will not proceed to adjudication where there is no subject-matter on which the judgment of the court can operate." *Ex parte Baez,* 177 U. S. 378, 390; *Brownlow* v. *Schwartz,* 261 U. S. 216,

217; *Montgomery Ward & Co.* v. *United States,* 326 U. S. 690; *St. Pierre* v. *United States,* 319 U. S. 41; *Chandler* v. *Wise,* 307 U. S. 474, 477–478; *United States* v. *Alaska S. S. Co.,* 253 U. S. 113, 115–116; *Commercial Cable Co.* v. *Burleson,* 250 U. S. 360; *Director of Prisons* v. *Court of First Instance of the Province of Cavite,* 239 U. S. 633, explained in *United States* v. *Hamburg-American Co.,* 239 U. S. 466, 476, *Richardson* v. *McChesney,* 218 U. S. 487, 492; *Jones* v. *Montague,* 194 U. S. 147; *Mills* v. *Green,* 159 U. S. 651, 653; *Cheong Ah Moy* v. *United States,* 113 U. S. 216, 218.

The probability that a similar controversy may arise again is not sufficient to save a case from being considered moot. *St. Pierre* v. *United States,* 319 U. S. 41. Petitioners' contention that possibility of a renewed controversy is sufficient to prevent a case from becoming moot is without merit, and is not supported by the cases cited by them (Pet. 13–14). In *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, for example, upon which petitioners appear to place principal emphasis, the Court reiterated the rule that its decision must be capable of granting effectual relief in the pending litigation but pointed out (p. 515) that "in the case at bar", which involved an action to restrain the enforcement of an order of the Interstate Commerce Commission, "the order of the Commission may

to some extent (the exact extent it is unnecessary to define) be the basis of further proceedings" and that the order in question was in effect a continuing one although its stated time limit had expired. Petitioners' further contention that the involvement of a public question which may require future solution is sufficient to prevent a case from being considered moot, is likewise without merit. Cf. *Montgomery Ward & Co.* v. *Unite States,* 326 U. S. 690. The case of *United States* v. *Trans-Missouri Freight Assn.,* 166 U. S. 290, and the various lower court cases cited (Pet. 14) do not support this contention. In the *Trans-Missouri* case, the Court held that the principal conduct sought to be enjoined, namely, the carrying out of illegal agreements, not only was capable of repetition but in fact had already been repeated by the adoption of new agreements similar to those which gave rise to the litigation. Thus, it is clear that in all of the cases relied upon by petitioners the judgments would have future operative effect in the controversy because of the continuing effect of the injunction or the continuance of the acts sought to be restrained.

Although the right to strike is admittedly one which should not be lightly curtailed, the need for decision in the instant case is difficult to perceive in the absence of any imminent threat to the exercise of this right. It would be highly speculative to assume that the particular combination of circumstances which gave rise to the specific issues

presented by the petition will recur in the near future. The general question of importance, namely, the right to enjoin strikes in industries seized, operated, and controlled by the United States, has been decided by this Court in *United States* v. *Mine Workers,* 330 U. S. 258. Petitioners' suggestions that authoritative review may be unreasonably delayed or avoided altogether are without merit. It is proper to assume, in the event a similar situation should arise in the future in which there is an actual judicial restraint on an existing or contemplated strike, that the judicial process will be sufficiently flexible to assure to petitioners expeditious review. There is, therefore, no occasion at the present time to consider the abstract question upon which petitioners seek the advisory views of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST, 1949.

APPENDIX

The following are excerpts from documents executed by petitioners and the railroads on August 11, 1948:

> 1. This agreement made this 11th day of August, 1948, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and made a part hereof and represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, and the employees shown thereon and represented respectively by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen and Switchmen's Union of North America through their Conference Committees.
>
> IT IS HEREBY AGREED:
>
> * * * * *
>
> SECTION 20. This agreement is in full and final settlement of the dispute growing out of notices served by the employees parties hereto and by the carriers parties hereto, on or about June 20, 1947, in accordance with Section 6 of the Railway Labor Act, of intended changes in agreements affecting rates of pay, rules and working conditions.

> 2. This agreement made this 11th day of August, 1948, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and made a part hereof and represented by the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees shown

thereon and represented respectively by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America through their Conference Committees.

IT IS HEREBY AGREED:

* * * * *

5. This agreement is in settlement of the dispute growing out of notices served by the employees parties hereto on or about September 30, 1947, in accordance with Section 6 of the Railway Labor Act, on the carriers parties hereto, of intended changes in agreements affecting rates of pay, rules and working conditions reading in part as follows:

"That effective November 1, 1947, all existing basic daily wage rates be increased thirty (30) per cent with a minimum money increase of $3.00 on the basic day. The same percentage of increase applied to the basic day will be applied to all arbitraries, miscellaneous rates, special allowances, and to daily and monthly guarantees."

subject, however, to the condition set forth in the Memorandum of Understanding signed concurrently with the signing of this agreement relating to further handling of certain phases of such wage increase request.

3. *Memorandum of Understanding.*

It is understood between the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, parties to the wage settlement executed this date and the employees parties thereto represented respectively by the Brother-

hood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen and Switchmen's Union of North America, that a wage request limited to the matter of the difference between the $1.24 per day, covered by the wage agreement of this date, and the amount requested in the notices served by the employees represented by those organizations on or about September 30, 1947 shall be given the same status as if it had been served as a new request on June 30, 1948. The purpose of this understanding is to avoid the serving of new notices by the employees represented by said organizations on individual carriers and negotiations thereon on such individual carriers. This understanding is made under the peculiar circumstances of this present wage settlement and shall establish no precedent for the handling of other cases.

U. S. GOVERNMENT PRINTING OFFICE: 1949